LOS ANGELES BAR BULLETIN

In This Issue

Vol. 34 MARCH 1959 No. 5

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Los Angeles
BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association, 241 East Fourth Street, Los Angeles 13, California. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $2.40 a Year; 20c a Copy.

VOL. 34 MARCH, 1959 No. 5

President's Page

By HUGH W. DARLING
President, Los Angeles Bar Association

A HEART ATTACK CAN BE A BLESSING

HUGH W. DARLING

A heart attack, if not fatal and most are not, is not exactly an experience to be coveted but it is by no means lacking in benefits. The principal profit is that the donee thenceforth is forced to steer his actions and emotions in a fashion and at a pace that will guarantee his full allotment of three score and ten years.

The "lucky" recipient should have known full well that he was taunting the whiskered gentleman with a scythe when he insisted upon galloping constantly (mentally or physicially) instead of trotting at least occasionally. He had seen too many of his friends nudged by a tired ticker not to be forewarned. But most of us insist that it will never happen to us. That's what I thought.

Three days before Christmas, approaching the end of a gratifying and healthful year and on the eve of boarding Western Airlines to spend the holidays in Mexico, I was clapped in bed with a pint of digitalis, a bucket of nitroglycerin pills and a can of oxygen.

Some two months later the medics granted permission to return to the salt mines but with stern orders not to race any more. With that welcomed passport assurance was given that the future held a full and normal life so long as the gait was kept in slow gear.

Too many lawyers toil too many hours under stress and strain. Too many of us get irritated or downright mad when tussling

with legal problems or treating with brother lawyers or when trying a lawsuit, particularly if the judge ignores the law or the facts (as we view them) and rules against us. Whether raised by wrath or rigidity, tension does not help our cause. A lawyer performs better with unruffled than with unruly emotions and no strain is put on the pump.

Remember, no matter how impossible it may seem it can happen to you. Don't put off until tomorrow what you can do today, but this doesn't mean that you have to scrabble to do everything today, particularly those tasks that can be done as well or better tomorrow. If you voluntarily will eschew galloping in the present you should avoid being hobbled involuntarily in the future—or worse. And you will bask in a cheerier and less turbulent atmosphere while turning out more and better work, plus lasting longer.

My warm thanks go to Retiring President Jud Crary, Senior Vice President Grant Cooper, Junior Vice President Steve Halsted, Secretary Walt Ely, Past President Gus Mack and Executive Secretary Stan Johnson for minding my stall when I was enjoying a lazy convalescence.

Issue Editor—Frank Loy

REMINISCENCES of the EARLY BAR of LOS ANGELES

It is not surprising that the Bar of early Los Angeles should take on some of the characteristics of the city—vital, ambitious, a bit boisterous and at times a trifle eccentric. At all times colorful, the following account, by one of Los Angeles most able lawyers of that era, concerns itself principally with the last quarter of the last century. Its author is J. A. Graves, who began his practice in Los Angeles in January 1876 and left it in 1904 to become a vice-president of the Farmers and Merchants National Bank of Los Angeles. As his account relates, he began his career with the well-known firm of Brunson & Eastman. The bulk of his active practice was in partnership with H. W. O'Melveny. These two formed the firm of Graves & O'Melveny in 1885. In 1888 they were joined by James H. Shankland and for the next sixteen years their firm was named Graves, O'Melveny & Shankland.

The following address by Mr. Graves was given at the Seventeenth Semi-Annual Dinner of the Los Angeles Bar Association on October 15, 1909.—The Editor.

Mr. President and Gentlemen:

As I am at the present time a defendant in an action for damages for slander, now pending in the Superior Court of this County (a judgment of dismissal of the action on demurrer to amended complaint sustained has just been entered in the case) and as what I have to say will be personal to some individuals still living, I do not propose to take any chances, as to a conflict in the record, as to what I do say, and have reduced my remarks to writing.

I have not attempted to give a history of the Los Angeles Bar, as I found it on arriving here, but have stated, from memory, a few Court incidents, which I trust may be of interest to you.

I arrived in Los Angeles on the 5th day of June, 1875. I came from San Francisco to accept a position as clerk with the law firm of Brunson & Eastman, and continuing my law studies. This meant, when reduced to more practical terms, to my working very hard all day for a small salary, and doing my studying at night. In the following January I was admitted to practice by the Supreme Court of the State, and then became a member of the firm of Brunson, Eastman & Graves.

That was a long time ago, as we measure human life, and quite a number of you were at that time yet unborn. Los Angeles had an able Bar then, as she has now.

The principal paying business was done by the firms of Glassell, Chapman & Smiths, Thom & Ross, Brunson & Eastman, and Howard & Hazard, while all of the others, including John D. Bicknell and Stephen M. White, were dividing up among themselves the business unappropriated by the firms mentioned, and waiting for the leading attorneys to die.

One of my first acquaintances in Los Angeles was Mathew Keller, known as Don Mateo Keller, a shrewd Irishman, who had been educated for the priesthood, and who jumped the game for more worldly pursuits. He was a client of our firm and he and I became quite chummy. He was a delightful conversationalist, a most interesting and entertaining man, a large property holder, a prosperous vineyardist and winemaker, and a man of affairs generally. He was eager to hear from me all I knew about the great lawyers of San Francisco. I imparted this information to him, and got from him, before I got personally acquainted with them, a pretty good understanding of the practice, habits, ability and standing of the members of the Los Angeles Bar of whom I think there are today not over five in practice who were in practice when I arrived in Los Angeles.

Don Mateo had names for each of them. For instance, he called Andrew Glassell "Mucho Frio," on account of his austere manner.

Col. Geo. H. Smith, who is still with us, he called "Circumlocution," and if the Colonel is here tonight, I will leave it to him whether Keller slandered him or not in so naming him.

A. B. Chapman, in my estimation, was then and is now, a most worthy gentleman. Because his firm had sued Keller repeatedly over certain land titles, he dubbed him "Sepelota," which, I believe, means "scavenger."

Geo. S. Patton, Mr. Glassell's nephew and a clerk in their office, he styled "Handsome George."

Capt. Thom, Judge Ross's uncle and partner, he called "Redundans," and when I asked him why, he replied: "Well, if Capt. Thom wanted to ask a witness if that was the same horse Pedro Lopez had, he would say, 'Are you quite sure, in your own mind, beyond the slightest hope, expectation or possibility of a doubt,

that this is the same, identical horse, that this man Pedro Lopez had?' "

Hon. E. M. Ross, now United States Circuit Judge for this District, he called "Generalissimo," on account of his military bearing and appearance.

Col. Jim Howard he called "Basso Profundo" on account of his deep bass voice.

Will D. Gould, who was then just as ardent an advocate of temperance as he is today, he dubbed "Sanctimonious Sanctimonium."

Frank Ganahl was with him "Punchinello," and W. H. Mace, whom some of you may remember, he termed "Bulbus." He was well named, for there was something about the man that looked like he was about to sprout.

His intimate friend, Judge Brunson, he called "Nervio Bilio," and Gen. Volney E. Howard, "Ponderosity," referring more to his physical rather than to his mental make-up.

Thomas H. Smith, or "Long Tom" Smith, as we called him, he called "El Culebra."

Horace Bell was "Blusterissimo," and Judge Sepulveda "Mucho Grande." His very intimate friend, I. W. Hellman, not a lawyer, but a banker, he always called "Valiente."

I asked him what he was going to call me. I had the first Remington typewriter in Los Angeles, and ran it incessantly. If you will examine the case files of the Superior Court of this County, from 1875 to 1880, you will find miles and miles of the work of that old machine in these files. It made much more racket than the present machines, and when running very fast, its metallic click sounded like "diddle daddle, diddle daddle." When I put that question to him, he promptly answered "Diddle Daddle," and with him that remained my name until the day of his death.

Judge Sepulveda was District Judge, and Judge H. K. S. O'Melveny, father of our Henry, was County Judge. He was a courtly gentleman, a friend and assistant of young and aspiring attorneys, the especial favorite of country jurymen, but I always thought a little given to bearing down on the lawyers for the jurors' benefit. He was expressive in his manner, and earnest in his rulings, and in all of his proceedings.

(Continued on Page 150)

TAX REMINDER

POUR-OVER TRUSTS

By MARTIN H. WEBSTER*

Let us first understand that a Pour-Over Trust, as that term is used in this article, is to be taken to mean an inter vivos trust into which assets are directed to be poured by the Will of a Testator. Such trusts are more and more frequently being used—and abused. Since these Tax Reminder Articles are written for the sole purpose of highlighting points for a general practitioner to bear in mind, and not for the purpose of definitive analysis, it will be the object of this note to touch upon several matters which are sometimes overlooked when the device of pouring over is used.

1. Precautionary Steps

To avoid troubles with the Wills Statute, these four items appear worth remembering:

(a) Where a pour-over trust appears to be in order, it would seem wise to write on its front cover or at some other conspicuous place that any amendment thereof should be followed by a codicil to the settlor's Will.

(b) Also, amendments might well be accorded some decree of formality, such as having at least two witnesses. An attestation clause, however, would appear inadvisable, since it is so closely associated with Wills that it may cause the instrument to be treated as a testamentary trust.

(c) The Will should contain a catch-all clause that if for any reason the pour-over process is invalid, then the Will incorporates by reference the provisions of the trust. Thus, if the pour-over process should be invalid, a testamentary trust will be provided to carry out the testator's purposes.

(d) The trust should contain an express provision empowering the trustee to receive the poured-over assets.

2. Practical and Tax Pointers

(a) The trust should contain suitable provisions for dealing with real estate, particularly the homeplace.

(b) The trust should accommodate the possibility that guardians of the estate of minors might be necessary.

(c) The wife frequently leaves her estate outright to her husband if she predeceases him. For tax and probate reasons, consideration should be given to the idea of having her estate pour directly into a trust, inter vivos if possible, in which her husband has only a life interest.

*Chairman of the Taxation Committee, Los Angeles Bar Association 1958-1959.

(d) The tax clause of a Will should be thought out very carefully where the Will contains a pour-over provision, since perhaps some of the trust assets received from insurance policies, for example, might provide a better source for tax payments than any probate assets. In this connection, the trust should contain a provision empowering loans to the settlor's estate or purchase of assets from it or from any of its distributees, in order that taxes—or any other pecuniary obligations of the probate estate—might be satisfied.

(e) The provisions of the trust should be reviewed from the standpoint of the trust assets being augmented by probate assets. Thus, a provision for all income going to a particular beneficiary might be in line for the trust assets alone but out of order where the trust is enlarged with probate assets.

(f) The trust should be drawn to achieve maximum tax advantage. Thus, consideration should be given to using multiple trusts in order to accommodate (i) multiple beneficiaries, (ii) the marital deduction, or (iii) the need to have the surviving spouse possessed of certain powers respecting her one-half of the community property which she need not possess respecting her husband's half thereof.[1] It might be mentioned that, if multiple trusts are used, the Will should specify the manner in which the estate property is to pour-over to these various trusts—whether equally, proportionately, or otherwise.

[1]Comm'r v Siegel, 25 F 2d 339 (9th Cir., 1957).

FEDERAL COURTS
CRIMINAL INDIGENT DEFENSE PANEL

The Los Angeles Bar Association recognizes with thanks the following attorneys who served on the Federal Courts Criminal Indigent Defense Panel during February, 1959:

Alva Baird	Ernest E. Johnson
Saul Cohen	Jacob M. Kartzinel
John R. Crowe, III	Donald W. Killian, Jr.
Lillian Finan	David S. Kirbach
Stanley J. Fishman	Paul Leevan
Macklin Fleming	Edward Marouk
William H. Hall	Steven Roseman
Lester Hecht	Alma Rudison
Daniel M. Herscher	Ronald Swearinger
Don I. Johnson	Fred T. Yasunaga

Volunteers for this vital work are still needed. Please call the office of the Association.

3. Over All Evaluation

(a) When properly used, a pour-over trust, in the author's opinion, offers its most conspicuous and outstanding advantage the availability of *integrated, unified and coordinated administration* of a decedent's assets — including his insurance and probate estate and those given to a trust during his lifetime. Thus, for example, discretionary provisions given to a trustee mean more when that trustee is the custodian of all of the assets than when he is the owner of some and some other person or entity is the owner of other of the decedent's assets.

(b) Probably the outstanding disadvantage under present law of a pour-over trust is the fact that it reduces the number of taxable entities in half. If a trustee receives insurance proceeds under an inter vivos trust, and receives probate assets under a testamentary trust, these constitute two separate trusts for income tax purposes taxable at a lower rate than that at which a single trust would be taxed. If in turn these trusts break up the corpus into multiple trusts for the several beneficiaries, even greater income tax advantages can accrue. Where, on the other hand, all of these trusts are blended into one instrument—namely, the inter vivos trust—the income tax advantage of multiple trusts is reduced substantially because the number of trusts is reduced. While legislation

may ultimately be enacted diminishing this factor in importance by forcing lumping of corpora for common beneficiaries, such legislation is still *in futuro*[2] and certainly cannot control—although it well might influence—present thinking.

* * * * * * * * * *

These are just some of the important items to be remembered by an attorney in drafting pour-over trusts and Wills. It is hoped that enumeration of these problems will make attorneys aware of the fact that the device is not one to be used wildly and with abandon, but that, as with so many other seemingly attractive devices in the law, slow sure-footed caution is a necessity.

[2]Final Report of Advisory Group on Subchapter J of the Internal Revenue Code of 1954 [Commerce Clearing House Special Report February 4, 1959, page 1, setting forth amendment to I.R.C. §641, covering multiple trusts.]

F.B.I. SEEKS SPECIAL AGENTS

J. Edgar Hoover, Director, Federal Bureau of Investigation, has announced that the FBI is interested in accepting applications for the Special Agent position. Applications will be accepted from male citizens of the United States between the ages of twenty-five and forty. Applicants must be at least 5 feet 7 inches without shoes and must have uncorrected vision of not less than 20/40 (Snellen) in one eye, at least 20/50 in the weaker eye without glasses, and at least 20/20 in each eye corrected. Applicants must be graduates of state-accredited resident law schools and also possess at least an Associate in Arts degree or its educational equivalent from a resident college. The entrance salary is $6,505 per annum, and additional compensation may be earned for overtime. Agents are paid their regular salary while attending a training school for thirteen to sixteen weeks. It is anticipated that the next training school will be scheduled for the late summer of 1959. They must be willing to serve in any part of the United States or its territorial possessions in which it is determined that their services are required. If any person is interested in applying for this position, he may communicate with Mr. D. K. Brown, Special Agent in Charge, 1340 West Sixth Street, Los Angeles, California, for further information.

Opinion of the Committee on Legal Ethics Los Angeles Bar Association

OPINION NO. 251

(May 16, 1958)

ATTORNEY'S FEES — OBLIGATION OF CLIENT AFTER CASUALTY INSURANCE COMPANY BECOMES INSOLVENT.

An attorney has requested the opinion of this Committee predicated on the following facts:

> For some years he has represented a casualty insurance company with headquarters in Texas. During this period he has handled a number of lawsuits for this company as insurance carrier for defendants and has been compensated by the company in a manner satisfactory to him. The insurance company has recently had financial difficulties and is now in receivership and he is quite concerned as to whether or not he will be compensated by the company for handling certain pending lawsuits.
>
> In view of the foregoing, it is his desire to withdraw from these pending cases.

Under Canon 44 of the A.B.A. Canons of Ethics, an Attorney is entitled to withdraw from employment which he has once assumed "only for good cause" and "The lawyer should not throw up the unfinished task to the detriment of the client except for reasons of honor or self-respect."

In some instances the non-payment of reasonable fees by the client to the attorney is deemed to be adequate reason for withdrawal of the attorney within the foregoing provisions of Canon 44. In each instance, however, it must depend upon the attitude and the circumstances of the client. For example, financial inability to pay is not generally considered adequate, at least where natural persons are concerned, as A.B.A. Canon 12 points out the legal profession is "not a mere money-getting trade."

In this particular situation he has, of course, been employed by the insurance company. However, by reason of relationship to the named defendants, he has directly undertaken to represent the insured. This is one of the services the insured paid for when he paid his insurance premium. This situation would definitely appear to give the insured an interest in the attorney's continuation in the litigation and to impose upon him, at least to some degree, a respon-

sibility toward the insured as a client as well as toward the insurance company.

It is the suggestion of this Committee that each individual situation be dealt with in the following manner:

1. He should obtain a definite determination of the position of the Receiver for the insurance company with respect to his fees and not rely upon his conjecture that he will not be paid by the company.

2. If he received reasonably positive indications from the company that he will not be paid for his work in the particular litigation, then he should discuss the matter of his compensation with the individual defendants involved in the particular lawsuit. In this regard, it would be ethical for him to ask the individual defendants involved to advance any additional costs which might be necessary and to pay his fees for the services thereafter to be rendered by him.

3. If the individual defendants involved refuse to advance any necessary costs or to pay his fees for future services, and as his withdrawal from the case would not then be prejudicial to the individual defendants involved, he then should petition the Court for permission to withdraw from the case.

If, after pursuing the procedure hereinabove set forth, and Court approval is granted for his withdrawal, it would nevertheless be unethical for him to withdraw under circumstances which would prejudice the rights of the individual defendants involved to obtain adequate representation.

This opinion, like all other opinions of this Committee, is advisory only (By-Laws, Article X, Section 3).

OPINION NO. 252
(August 5, 1958)

ATTORNEY-CLIENT; ADVERSE INTERESTS; CONFIDENTIAL COMMUNICATIONS. Associate Attorney May Become Employed By Adverse Counsel Upon Notification To The Client and Abstention From Further Participation In Subject Litigation.

The Committee has been requested to answer as to the propriety of conduct set forth in the following statement of facts:

> A, an attorney, is not a partner, but an associate of B, an attorney. A wishes to discontinue this association and become associated with another firm of C and D, attorneys. In a controversy between X and Y, X has been represented by C and Y by B. In a controversy between L and M, L has been represented by C and M by B. A, as associate, has performed some substantial service for B in connection with the controversy between X and Y. A, as associate, has also done some, but very little, work in connection with the controversy between L and M for B. Both controversies are still not completely settled as A is contemplating his change in associations.
>
> If all parties B, C, D, X, Y, L, and M are notified of the intended change of associations by A and are notified that A will not participate further in the pending controversies between X and Y, and L and M, will A be ethical in accepting a position with C and D, and will C and D be ethical in permitting A to become their associate?

Canons numbered 6 and 37 of Professional Ethics of the American Bar Association pertain to conflicting interests and clients' confidence with particular reference to a change of the lawyer's employment. The pertinent parts of these Canons are as follows:

> " . . . The obligation to represent the client with individual fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed." (Canon 6)
>
> "It is the duty of a lawyer to preserve his clients' confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information . . . " (Canon 37)

Henry S. Drinker, Chairman of the American Bar Association Committee on Professional Ethics, at page 108 of his book entitled "Legal Ethics," states in construction of Canon 6:

> "A lawyer employed by a law firm may, with full disclosure to it, properly accept employment from a lawyer for the other side in a case conducted by him, to handle matters having no relation to the first case; and where he is assisting his lawyer-employer in a trial he may take a position with the opposing lawyer at a higher salary if he takes no further part in the case being tried."

Mr. Drinker appears to rely on Opinion 430 of the Committee on Professional Ethics of the Association of the Bar of the City of New York where A, an attorney, employed X, an attorney, and X had an active part in the preparation and trial of a case by A, his employer wherein B represented the other side. A new trial was ordered and B offered X a position in his office at a better salary than A had paid him. The parties involved asked this New York City Committee if it was ethical for X to take the position with B's firm (a) if he took a further part in the trial; and (b) if he took no further part in the case. It was the opinion

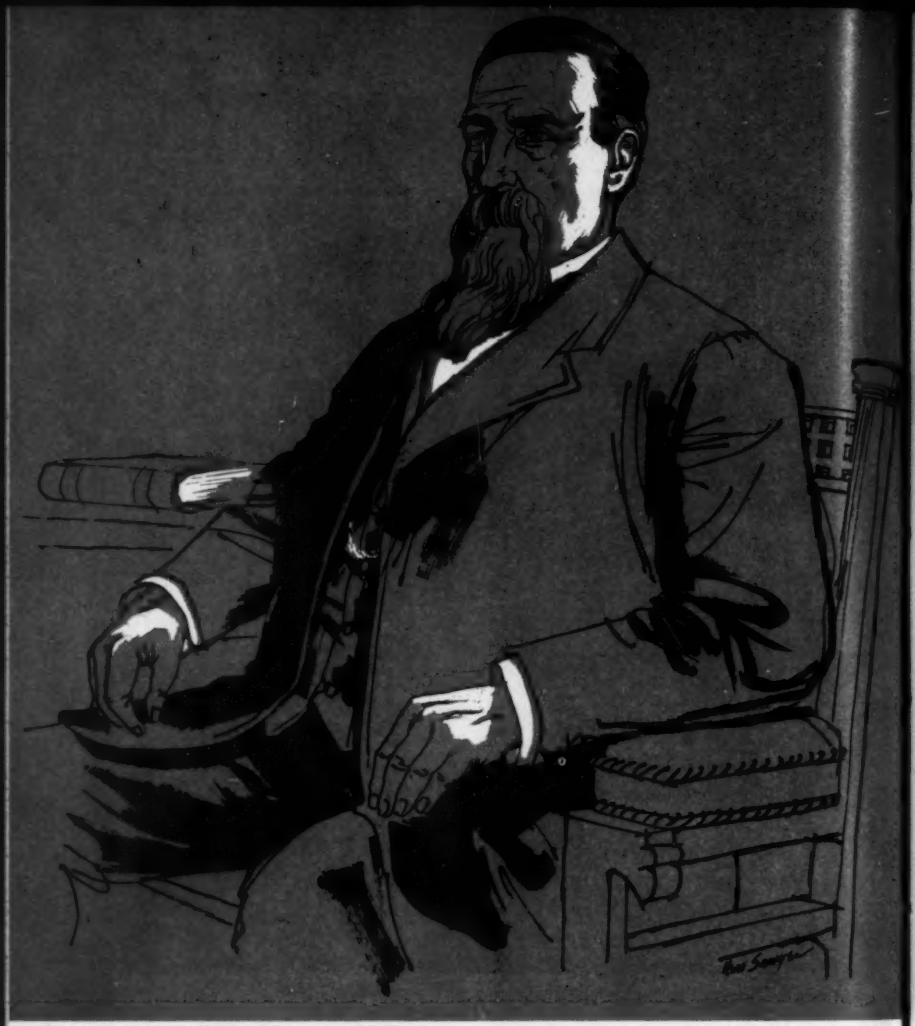
of that committee that subdivision (a) of the question should be answered in the negative and subdivision (b) in the affirmative.

This Committee has held that an attorney ethically may represent a former adversary party provided he does not thereby prejudice the rights of, or his usefulness to, the clients he formerly represented against such adversary, and provided he is not required to divulge, upon becoming the attorney for such adversary, the confidential information received from his clients. This is true even though the attorney, in representing such former adversary party, must take a position that is inconsistent with the position he took while representing his clients against such adversary. (See Opinion No. 141, May 14, 1943)

Assistance also is found in a recent opinion of this Committee No. 246, dated October 28, 1957, where the Committee in effect approved the employment of attorneys by a private law firm after severing their relationship with a governmental legal body involved in litigation with the same firm. Facts revealed to the Committee by the parties seeking this opinion indicated that, although at the time the attorneys left the public body and became associated with the private law firm there were pending various condemnation cases in which the firm represented the landowners against the condemning body, it was understood the attorneys in question would have no part in any litigation against the condemning body about which they had acquired special knowledge during that employment nor in any litigation on file at the time of their departure from public service even though they may not have had special knowledge concerning it, without first obtaining consent of the condemning body. Facts also showed notice of the intended employment was given all parties and no objection was raised.

In view of the above, it is the opinion of the Committee that if all of the clients involved in the litigation be advised that the party transferring will not participate further in the pending controversies, and will not disclose any of the confidences acquired in his former employment pertaining to these same matters, he may accept a position with C and D. C and D would be ethical in so permitting A to become their associate. A cannot participate further in pending controversies involving clients of his former employer without the express consent of these clients.

Like all other opinions of this Committee, this opinion is advisory only (By-Laws, Article X, Section 3).



Thirteenth of a Series Featuring Governors of California

William Irwin

Educator, Senator...CALIFORNIA'S THIRTEENTH GOVERNOR, 1875-1880

He left Ohio and a professional college career to come to California. In 1861, he was elected to the State Assembly. Prior to his election as Governor, he served as a state prison director and Lieutenant-Governor. He was appointed and served as a Commissioner for the Port of San Francisco until his death in 1886. A few years later, Security Bank set up its Trust Department. Today, three generations of Southern Californians have used our services.

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What's Doing Around the County

(The Bulletin hopes to run this column each month. Affiliated Associations are invited to send in items of interest.)

SANTA MONICA BAY DISTRICT BAR ASSOC.:

February 9, 1959 meeting:

The officers of the Santa Monica Bay District Bar Association were pleased to play host to the women members of the judiciary in the County of Los Angeles as well as the Santa Monica Bay District Legal Secretaries Association.

Honorable Justice Thomas P. White was Master of Ceremonies and Honorable Judge Mervyn A. Aggeler introduced the legal secretaries.

We were also favored by the attendance of Justice Mildred L. Lillie and the Honorable Judges Kathleen Parker, Roberta Butzbach, Elizabeth Zeigler, Ernestine Stahlhut, and Mae Lahey.

March 17, 1959 meeting:

St. Patrick's Day—a joint meeting of the Bay District of Los Angeles County Medical Association and the Santa Monica Bay District Bar Association was held on March 17, 1959 at the Palm Room of the Miramar Hotel.

The scheduled speaker was Raoul Magana who spoke on a subject of mutual interest to both groups. The group was further favored by the attendance of actress Jayne Mansfield who was the official hostess for the evening.

Plans are being made for the May 11, 1959 meeting at which time our Program Chairman, Commissioner Arthur K. Marshall, has arranged for Attorney General Stanley Mosk to address the group at the Fox & Hounds Restaurant at 7:30 P.M.

POMONA VALLEY BAR ASSOC.:

Newly elected U. S. Congressman from the 25th District of California, George A. Kasem, wrote to his friends in the Pomona Valley Bar Association recently advising that each Senator and member of the House of Representatives receives one copy weekly of the Official Gazette of the U. S. Patent Office and that he has directed that his copy be sent to the Pomona Branch of the Los Angeles County Law Library, and that a copy of the Congressional Record will likewise be mailed to the Law Library.

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

The **Detroit** Bar Association is considering the establishment of a clients' security fund to indemnify clients who suffer losses by reason of an attorney's defalcation. We understand such a plan has been adopted by the **Oregon** State Bar, an integrated bar association, and by the **Vermont** Bar Association, a voluntary organization. It is also our impression that a similar plan is operating in **British Columbia** and possibly in other Canadian provinces.

* * *

The publication in the January, 1959, number of this journal of an allegedly anonymous poem entitled *"Ode to a Buried Temple"* resulted in the receipt by this department of several bits of poesy relevant thereto, all under pledge of secrecy as to their source. We regret that space permits us to give you only two samples. This one reminds us faintly of something we've heard before:

Walter, Walter, there you are
Twinkling like a little star
Behind a wisp of anonymity
Your brethren pierce with unanimity.

This one may lead to a revolution in the form and style of legal textbooks:

Walter Nossaman, Esquire:
This note is written to inquire
If you propose that in the next
Edition of your trusty text
The law will be laid down in rhyme?
If so, I'll buy a set—on time.

True to His Promise

The will of the wealthy, but eccentric, man was being read and the relatives all listened expectantly. Finally the lawyer said: "And to my nephew, Charlie Jones, whom I promised to remember—'Hi there, Charlie!' "—*Tracks,* house organ of the Chesapeake & Ohio Railway.

* * *

"An autopsy performed at the Medical Seminar for lawyers in Richmond, Virginia, . . . disclosed a murder before the eyes of the lawyer audience.

"The corpse, fished from the James River the day before, was intended merely to serve for instructional purposes; but in the midst of the examination by Dr. Geoffrey T. Mann, State Medical Examiner, it was found that the middle-aged man had been shot by a .22 calibre pistol. The body was immediately removed from the autopsy room and a less embarrassing cadaver substituted."—*Journal of the American Judicature Society.*

* * *

A prolonged effort to admit colored lawyers to membership in the Bar Association of the **District of Columbia** ended in success last fall. The vote was on an amendment to eliminate the single word "white" from the qualifications for membership, and it finally received the necessary two-thirds vote. Five times before it had been defeated on a mail ballot. Once it had carried by a voice vote, but the meeting had gotten so far out of hand that the vote was declared to be invalid by the United States District Court for the District of Columbia. (See *Brothers-in-Law,* November, 1957). The seventh and last time it was voted on by ballot at the largest meeting of the Association on record.

* * *

The Committee on Aeronautical Law of the **New York** State Bar has held its first symposium on the problems of outer space.

REMINISCENCES OF THE EARLY BAR OF L.A. . . .

One of the funniest things I ever saw, occurred in Judge O'Melveny's Court Room. A Mexican had been convicted of grand larceny in stealing horses. He couldn't talk English, and Judge O'Melveny called on Capt. Haley to interpret the sentence to him. To appreciate the story you should have known Haley. He had been a surveyor, a sea captain, a druggist, a doctor, and was now a practicing lawyer, and was himself a witness in nearly every case he ever had. It was of him that Col. Jim Howard, in an argument before a jury said: "But we are told by Saulisbury Haley, Surveyor Haley, Captain Haley, Druggist Haley, Dr. Haley, Lawyer Haley, Witness Haley, that the whole story is a fabrication." He was short of stature, a rotund, meek appearing man, and was a perfect

picture of innocence personified, as he advanced to the prisoner's dock. He stood up by the side of the Mexican. To look at the men as the Judge addressed them, no one could have told which was the culprit. Judge O'Melveny glued his gaze on Haley, pointed his forefinger at him, and in his most penetrating voice and most earnest manner, addressed the prisoner through Haley as follows:

"You have been charged by the Grand Jury of this county with a most heinous offense—"

(Haley threw up his finger in sign that he had enough, and interpreted that to the Mexican, who replied, "Si si Senor.")

Then the Judge, in the same impressive manner, still looking at Haley, and pointing his finger at him, continued: "You have been tried by an intelligent jury of your peers—"

(Signs from Haley, and further interpretation, the Mexican again answering, "Si si Senor," and mind you, the attention of the Mexican was fixed on Haley, not on the Court.)

"And after a fair and impartial trial, at which you were ably defended by a loyal attorney, this jury, after long and mature deliberation, has found you guilty of the offense charged. Have you anything to say why sentence should not be passed upon you?"

(More interpretation, and "Nada," with a shrug of the shoulders, from the prisoner).

Then the Judge continued: "It is a shame that a fine, intelligent looking man like yourself cannot find something better to do than horse stealing, and I trust that the sentence I am about to impose upon you will deter others from following your example, and that your incarceration will be for your moral welfare—"

(Sign from Haley, and long interpretation. "Si si Senor, esta bueno," from the prisoner.)

"I will, however, temper mercy with justice in dealing with you, and it is the sentence of this Court that you be confined in the State's prison at San Quentin for a term of four years."

(More interpretation, "Si si Senor, esta bueno, muchas gracias," from the prisoner.)

No other human being on earth could have interpreted that sentence with the meekness and humility that Haley did, and as the Judge never took his eyes off him, "any looker-on in Venice"

would have thought that Haley was going to the penitentiary for life.

Col. Howard was a man of rare wit, and great general information. He was a clever magazine writer, and a shrewd criminal lawyer, and worked hard upon his cases. He and Col. E. J. C. Kewen, an orator of such rare qualities, that he deserves a place in the niche of fame by the side of Thomas Starr King and E. D. Baker, were partners for years as Kewen & Howard. They enjoyed a lucrative criminal practice.

A Vigilance Committee, led by a French barber named Signoret, who was huge in frame, and had a hand like a ham, and had oratorical ambitions, and preferred revolution to lawful government, took four men out of the County Jail and hung them. They thought that Kewen & Howard were too successful in defending criminals, so they passed a resolution that they should hang Kewen and Howard. The next day Col. Howard met Signoret in front of the Downey Block. He had a habit of standing while talking with his feet well apart, and his head and shoulders bent forward, and of twirling his eye-glasses, which he carried suspended from a long gold chain. "Signoret," he said, "I understand you are going to hang Kewen and Howard?" Signoret was perplexed and hedged a little. "Yes," he answered, "that was our intention last night." "Come now, Signoret," said Howard, "we are old friends; be generous, let's compromise. Hang Kewen, he's the head of the firm."

Some lawyer, I forget who, now, sued Don Miguel Leonis, a litigious Basque sheep owner—(I think at this late date, the present Judges of the Supreme Court are acquainted with this name, and some of his affairs through recent litigation before them)—for a

twenty-five thousand ($25,000) dollar fee for services rendered. He was trying his own case before a jury, and faring badly. Col. Jim Howard, by chance, came into the Court room. The plaintiff, who was his own lawyer, in desperation, without consulting Howard, put him on the stand to prove the value of his services. He stated what he had done for Leonis, and asked Howard if, in his opinion, $25,000 was a fair compensation for services rendered. Howard replied: "My practice has been of such a vagabond, beggarly nature, that I am hardly in your class, but if I should earn a $25,000 fee, I would die of heart failure; but, knowing you and your legal ability, and knowing the litigious character of Don Miguel, I cannot realize any services that you could have rendered him that would be worth over $2.50, unless you had killed him, then by a stretch of your conscience you might have charged him $5.00."

Among the thoroughly able men at the Bar was Frank Ganahl, "Punchinello," as Keller called him. He also was quick witted.

He was arguing an appeal in the Superior Court for a defendant, convicted of that most revolting crime, rape. There is usually some idiot of a lawyer sitting around the Court room, whose sole ambition is to sneak up to some lawyer making an argument, and whisper advice to him. At this time the interferer chanced to be Judge Delos Lake of San Francisco. He would pluck Ganahl by the coat-tail, and in a stage whisper advise him of some point to be made in his argument. This occurred six or seven times, much to Ganahl's interruption and annoyance, and he finally said: "Your Honors, my friend, Judge Lake who, by the way, is an eminent authority on the science and crime of rape, suggests to me this kind of an argument." Lake made no more suggestions to Ganahl.

Among the lawyers of that day was W. H. Mace, called "Bulbus" by our friend Keller. He brought an action to partition one of our great Spanish grants. He wrote his complaint on foolscap, writing only on one side of the paper, and when he had finished a page he would paste another page on, and roll up the pages. Glassell, Chapman & Smiths demurred to his complaint on the ground that he did not state facts sufficient to constitute a cause of action. Mr. Glassell presented his point briefly, and sat down. Mace took up his camplaint, which was a roll about sixty feet long, stood up on a chair, and with a little sort of a giggle, shot the thing clear

across the Court room, and holding the last page in his hand, turning to the Court said: "If that complaint does not state facts sufficient to constitute a cause of action, then I am incapable of drawing one long enough to do so."

When I got to Los Angeles, and for years afterwards, Long Tom Smith, or "El Culebra," kept all the lawyers in the city busy on different cases, he having one side of each of them. They were generally cases with little in them but worry. He did all the writing and copying on his side himself. We all wondered how he did it. He wrote a peculiarly beautiful hand. It was always the same, page after page, and mile after mile, no variation in any letter. While it was easy to read, there was something snakey about it, something uncanny, and you were always looking for something treacherous in his writings, and you generally found it. He invoked every possible motion known to the practice, and invented many that were not known to it. He kept clients, judges and lawyers in a constant uproar. He never acknowledged defeat, and "E'en though vanquished, he could argue still." When he finally got to trial, he wore everbody out, and created a general state of insubordination and revolt. He could not brook ridicule. On one occasion he was taking a deposition, and Eastman was opposing him. He had a great habit of making copious long hand notes, and while he was writing out the last answer to a question, he would start another question. "Do you remember," he said to the witness, and he kept on writing. He did this three different times without finishing the question, and just after his last "Do you remember," Eastman, in his most impudent and tantalizing way, added "Sweet Alice, Ben Bolt?" Tom was hot in a minute, tore up his notes, denounced Eastman's levity, and would not proceed with the deposition.

The man who could get more pure fun out of the practice of law than anyone else was Judge Anson Brunson. He was by far the ablest man here when at his best. He was utterly reckless when trying his cases, and relied upon his wit and sheer ability to pull him through. He got into more difficulties, and got more rulings from the Supreme Court on questions of practice than all the lawyers in California put together. Mock heroism, pathos and humor, all came naturally to him, and he could make a little thing look like a mountain, and a big question shrink off the map by a look, a gesture or impassioned appeal.

He had demurred to a complaint upon one occasion, and when the case was called, he said to the Court that he would submit the demurrer without argument. Not so, his opponent. He must argue the question. Vital rights were at stake. The law must be vindicated. "All right," said Brunson, "I waive the opening." Then the other fellow argued everybody out of the Court room, and the Judge almost off the bench, with dreary platitudes and citation of authority after authority that did not apply, and when he sat down, Brunson arose, took a drink of water, shifted his papers, and with a merry twinkle in his black eyes, said in the most aggravating way: "Your Honor, I still submit the demurrer without argument." "Demurrer sustained," said the Court.

We were trying a case of the Union Anaheim Water Company against the Stearns Ranchos Company, a case involving water rights at Anaheim. Gen. Volney E. Howard opposed us. He called as a witness, George Hanson, an old-time surveyor, who had laid out the town of Anaheim. As the witness advanced to the stand, General Howard remarked of him, "The father of Anaheim." He asked him the usual preliminary questions, and then came this question: "Mr. Hansen, when did your intercourse with Anaheim begin?" Like a shot out of a cannon, Brunson was on his feet, with his hand up, and in a most impassioned manner, full of fire and assumed earnestness, said: "Your Honor, I object. Counsel cannot incriminate his own witness. He has introduced this witness as 'The father of Anaheim,' and for the father to have intercourse with the daughter is incest." Objection overruled. "Exception," said Brunson, and a looker-on would, from his manner, have thought that he meant every word of it.

A carpenter, a worthy man and an Englishman, had an Irish wife, who was literally a "She Devil." Being unable to stand her daily abuse, he sued her for a divorce, Judge Ross being his attorney. She came to us for defense. She owned considerable good real estate in San Francisco, and we took a mortgage on it to secure our fees. There was some delay in going to trial. She came to the office daily and heaped the whole outfit with the vilest abuse. She accused us of selling her out, and taking her husband's money with the intention of letting her be beaten. We stood it all with good grace, and diligently prepared the case for trial. It finally came off. The supporters of the respective parties were out in full

number during the trial. Daniel Desmond, a hatter, the father, by the way, of Joe Desmond of Aqueduct fame, and C. C. Desmond, one of our business men, was on the stand, testifying to her general "cussedness." He lived next door to her, and was the leader of the village band. He said that he never got out on his back stoop of a quiet summer night, when the orange blossoms filled the air with fragrance, and the mocking birds were singing their love songs to their mates, to practice on his cornet, but what the defendant would line up her children on the other side of the fence, having each one of them industriously beating a tin can. Eastman was examining him, and with his most affable smile, and a wave of his hand, he said, "An opposition band, Mr. Desmond."

When the trial was ended, the Judge denied the plaintiff his divorce. There was nothing from our client too good for us then. She came to the office and was all humility. Apologized for her past conduct, and was most effusive in her congratulations and praise of our efforts. She rushed up to Judge Brunson, Eastman being away, and said to him: "Do you know who you put me in mind of?" "No, I don't," he replied. Realizing that what she was about to say was sacrilege, she rolled her eyes, made the sign of the cross, and said, "Of our good Lord Jesus." She left the office. Eastman came in, and Brunson, thinking he had a good joke, told Eastman what she had said. Quick as a flash, Eastman turned to me and said, "Buzz, it always was a mystery beyond my understanding why those scoundrels crucified that poor fellow, but now I know."

Within a week after the trial of this case, our client, the defendant, dropped dead. Charlie Gould. Court room Clerk of the Court in which it was tried, met Judge Sepulveda before he had heard of it, and said to him, "Judge, God has overruled one of your decisions." "How's that?" said Sepulveda. "Why, you denied Hargitt a divorce, and He has granted him one. His wife dropped dead this morning."

Shortly afterwards Hargitt administered his wife's estate, and came around to pay us our mortgage. He paid the money, and was given a satisfaction of mortgage. Eastman then put his arm around his shoulders, and walked up and down the room with him. "Old man, you ought to double that fee, and then be under lasting obligations to us."

Hargitt said, "Why?" "Well, don't you see, if we had not successfully defended your action for divorce against your wife, you never would have had the privilege of administrating her estate, or cutting this pie."

Referring again to Brunson, we were once trying a case between two bankers. One of them charged that while he was in Europe, the other nearly wrecked the bank, and when it was exceedingly low in funds, the home partner loaned nearly all the money in the bank to further a real estate speculation, and took a written agreement that he was to share in the profits. Suit was brought to make him refund. The banker, who was absent was back, put his house in order, got rid of his partner, and in the course of the trial showed by his testimony the really serious condition that the bank was in when the loan was made. When that testimony came, Brunson, in all seriousness, asked for a recess of fifteen minutes, and gave as a reason for wanting the recess that the bank held his note for $1500, and he could not consistently, with his financial honor, leave his note any longer in an institution in the condition that that bank was shown by its own president to be in, and he wanted to go and pay it off. As he was utterly callous to all obligations, the humor of his request is the more apparent.

Brunson was a great distinguisher of cases. I believe he was better at this than even Justice Lucien Shaw, when writing an opinion involving a water right. When you got him nailed to the cross, as you thought, with a pile of authorities, all applicable to your case, he would, in an ingenious way, distinguish them from his case, and waive them aside.

Like many other men of genius, Brunson lacked a balance wheel. He destroyed the vital forces of his physical system, deadened all the moral instincts of his nature by indulging in the worst sort of dissipation. He let power and influence and standing and character slip from his grasp, and he died long before his time, as much from the disappointment, which he keenly felt, as from any physical ailment.

In my opinion one of the greatest orators who ever delivered an oration in California, and one of the ablest of her lawyers, was James G. Eastman. He had passed the meridian of his career before arriving here. A Fourth of July oration that he delivered in this city on July 4, 1876, is a masterpiece of that class of oratory,

and is well worth the careful perusal of any educated man. It shows the highest devotion to the principles of our Government, was chaste in language, elegant in diction and inspiring in the emotions it aroused. He was a better educated, better read man than Brunson. He had more practical, common horse sense and was a better judge of men and of human nature than Brunson.

He had all of Brunson's vices, and lacked the same virtues that Brunson lacked. He was not the latter's equal as a book-read lawyer, but in many other respects he was his superior. In the case of the People vs. Waller, a murder case, he committed the indiscretion of spiriting away a witness, was caught at it, convicted and fined for it. This marked the beginning of his downfall. His connection with the Hoyle extradition case brought him still further disrepute. Powerful friends of his more prosperous days gradually deserted him; health failed him; disease rendered him revolting to look upon, and after wandering the streets of this city by day and by night for years, a mendicant, he died at the County Farm, a mental, moral and physical wreck. Like many of our brilliant men, he paid the penalty of genius.

Here let me pay this tribute to each of these men. I entered Eastman's office in 1873, a young man just from college, a stranger to the world, and with character unformed. I came to the office of Brunson and Eastman two years later. Dissipated as these men were, their advice to me was always good. They warned me against the evils of drink and debauchery. They pointed out to me the straight and narrow path. As far as I am concerned, they were teachers of all that was good and inspiring, no matter how bad an example they set me, and they were proud of me as a man of good character and habits, and as long as either of them lived, rejoiced at my success.

. . . to be continued

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